

Appeal of Chapman Manor, Inc., et al.

if the purchaser's loan was not approved and the sale was not consummated.

Appellants contend that the proceeds of sale were not accruable until the vendor had the unconditional right to receive the purchase price and that such right did not exist until the acquisition of title insurance, closure of escrow, and formal transfer of title which events occurred in the subsequent year,

In Appeal of Colima Homes, Inc., Cal. St. Bd. of Equal., Nov. 27, 1956 (CCH, 2 Cal. Tax Cases, ¶200-638, (P-H, St. & Loc. Tax Serv., Cal., ¶13,158)), we held that where possession has been transferred, the buyer's loan application had been approved and all that remained was closure of escrow and formal transfer of title, income to the vendor had accrued. The principle there followed was that a sale of realty is complete and the gain is includible in income when the buyer has assumed the burdens and benefits of ownership and no substantial contingencies remain to be satisfied. (See also, Commissioner v. Union Pacific R. Co., 86 Fed. 2d 637; Standard Lumber Co., 8 B.T.A. 352; Harris Trust & Savings Bank, 24 B.T.A. 498.)

In the Colima Homes appeal, title insurance had been obtained in the earlier year. In the present case, title insurance was not obtained until the later year. Acquisition of title insurance, though perhaps a substantial contingency in some cases, was not in this one. Appellants were tract owners well aware of the status of their title. There is no evidence of any doubt as to their ability to insure it. Under these circumstances, acquisition of title insurance was not a substantial contingency that would prevent the accrual of income. (Frost Lumber Industries, Inc. v. Commissioner, 128 Fed. 2d 693; Standard Lumber Co., supra.)

O R D E R

Pursuant to the views expressed in the Opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 25667 of the Revenue and Taxation Code that the action of the Franchise Tax Board on the protests of Chapman Manor, Inc., Santa Ana Estates, Harbor Park Homes, Lifetime

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Investment Corp. No. 1, and Sunny Homes, Inc., Assumer, to proposed assessments of additional franchise tax in the following amounts: \$203.23 and \$203.23 against Chapman Manor, Inc., for the taxable years ended November 30, 1953, and November, 1954, respectively; \$755.21 and \$755.21 against Santa Ana Estates for the taxable years ended September 30, 1953, and September 30, 1954, respectively; \$325.61 against Harbor Park Homes, for the taxable year ended February 28, 1955; and \$380.01 and \$142.47 against Lifetime Investment Corp. No. 1, for the taxable years ended August 31, 1954 and August 31, 1955, respectively, be and the same is hereby sustained,

Done at Sacramento, California, this 20th day of April, 1960, by the State Board of Equalization.

John W. Lynch, Chairman

George R. Reilly, Member

Richard Nevins, Member

_____, Member

_____, Member

ATTEST: Dixwell L. Pierce, Secretary